

S.1958. Raising the CERCLA financial cap on removal actions funded with Superfund monies to \$4 million per incident

Policy Objective

Raise the current \$2 million per-incident cap on Superfund monies available for removal actions in response to release of hazardous substances or pollutants to \$4 million.¹ The current cap has been in place since 1986.² This change will address the reduced spending power of the cap and reflect the fact that removals may easily exceed the current limit.

Background

CERCLA authorizes two types of response actions: "removal" and "remedial"³ actions.

- A **removal action** generally is a short-term and/or emergency action that may be necessary to address a release or threat of release of a hazardous substance or pollutant into the environment.
- A **remedial action** generally addresses long-term threats to human health and the environment. Remedial actions permanently and significantly reduce risks associated with releases that are serious but lack the time-criticality of a removal action.

CERCLA Section 104(c)(1) restricts a **removal action** funded with Superfund monies to one year and the cost to \$2 million, with exceptions in certain situations.

These limitations on removal actions are intended to ensure that removal actions are not pursued on a broader scale as a way to avoid the more in-depth review and public process required of remedial actions. However, in cases of large or particularly complex releases, financial limitations may restrict the ability of agencies to respond effectively to the release.

A waiver of cost limits may be issued in case of emergency or to allow removal activity that is consistent with further remedial action at the site. But, issuance of waivers requires that a site be proposed for or on the Superfund National Priority List (NPL). Many sites which require emergency removal actions by the federal government will never be considered for listing on the NPL, and therefore could expend the \$2 million available with no option to appeal for more funds to complete a removal action.

¹ Indexed for inflation, \$2 million in 1986 would have the same spending power as \$4.27 million in 2013 (according to the Bureau of Labor Statistics inflation calculator).

² 1986 Amendment: Subsec. (c)(1). Pub. L. 99-499, §104(e)(1), substituted "\$2,000,000" for "\$1,000,000" and "12 months" for "six months".

³ The Nation Contingency Plan allows remedial actions to be financed with Superfund monies **ONLY** at sites listed on the NPL, whereas removal actions may be financed with Superfund monies at non-NPL sites to address emergency situations.